

# NEWS



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## Notice of Proposed New Rules

**Re: Proposed New Rules: N.J.A.C. 12:121  
Licensing of Crane Operators**

Attached please find the above-referenced matter which was published in the April 19, 2004 New Jersey Register.

If you have any questions, please contact Frederick S. Cohen, Regulatory Officer at (609) 777-2960.

## LABOR

### (a)

#### DIVISION OF PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH

#### Licensing of Crane Operators

#### Proposed New Rules: N.J.A.C. 12:121

Authorized By: Albert G. Kroll, Commissioner, Department of Labor.

Authority: N.J.S.A. 45:1-21 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-163.

A public hearing on the proposed new rules will be held on the following date at the following location:

Friday, May 7, 2004

10:00 A.M. to 12:00 Noon

New Jersey Department of Labor

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey 08625

Please call the Office of Regulatory Services (609) 984-3620 if you wish to be included on the list of speakers.

Submit written comments by June 18, 2004 to:

Frederick S. Cohen, Regulatory Officer

Office of Regulatory Services

New Jersey Department of Labor

PO Box 110—13th Floor, Suite G

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If you need this document in Braille, large print or audiocassette, contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

#### Summary

On September 4, 2003, the Legislature promulgated P.L. 2003, c.171, N.J.S.A. 45:26-1 et seq., concerning the licensure of crane operators, which is to become effective on April 1, 2004. The Act, and these proposed rules, are designed to insure that crane operators, as defined therein, are properly tested and certified to safely perform their inherently dangerous work activities.

Thus, the proposed rules, in concert with the Act, provide, as noted, for the licensing of certain crane operators. In regard thereto, they establish a seven-member "Crane Operators License Advisory Board" under the jurisdiction of the Department of Labor. The Board will consist of residents of the State and shall include the Commissioner of Labor, or his or her designee, serving ex officio, as chairperson representing the Department. In addition, the Board will also consist of one heavy highway, utility or transportation construction contractor representative, one building contractor representative, and four licensed crane operators who have been recently engaged in crane operations in New Jersey for at least five years immediately preceding their respective appointments thereto. However, the proposed rules, like the Act itself, also provides that for a period of one year after the effective date of the Act, April 1, 2004, and notwithstanding any other provisions to the contrary, the first four crane operators appointed as members of the Board shall not be required, at the time of their first appointment, to be licensed under the provisions of the Act and of these proposed rules. Additionally, the rules note that it is the Governor who shall appoint each Board member for a three-year term, except that of the members first appointed, two shall serve for terms of three years, two shall serve for terms of two years and two shall serve for a one-year term. Furthermore, each Board member will hold office until his or her successor has been qualified therefor. The rules also provide that no Board member can serve two successive terms, in addition to any unexpired term to which he or she was appointed. The proposed rules, moreover, set forth the duties of the Board and the eligibility requirements for the licensing of crane operators. Specifically, to be eligible for a license, an applicant must be at least 18 years of age; maintain a current medical examiner's certificate; have at least 1,000 hours of crane-related experience; have received certification from the National Commission for the Certification of Crane Operators or any other organization found by the Board to offer an equivalent testing and certification program which meet the requirements of the American Society of Mechanical Engineers ASME B30.5 and the national accreditation requirements of the National Commission for Certifying Agencies.

Additionally, the proposed rules delineate the procedures which must be followed in completing an application for a crane operator's license, including requisite personal information, documentary evidence of appropriate professional and medical certification, and photographic identification, as well as the fees which must accompany the application. To that end, the proposed rules require that a fee of \$250.00 for five years shall accompany the initial license application and a fee of \$250.00 shall accompany any five-year renewal application. They further note attendant late application and license replacement fees, the manner of payment therefor and the ability of the Commissioner of Labor to adjust the fees in order to support associated programmatic costs. The specific specialties covered by the licensing provisions of these proposed rules are lattice boom crawler crane, lattice boom truck crane, telescopic boom cranes with a capacity of more than 17.5 tons and telescopic cranes with a capacity of less than 17.5 tons. The provisions do not apply to the licensing of those persons who operate forklifts, digger derrick trucks, aircraft, bucket trucks, knuckle booms, trolley booms, or any vehicles or machines not having a power-operated winch and load line. Likewise, the proposed rules do not apply to the military forces of the United States or its allies or to any duly authorized militia of any State, nor the police and fire departments of this State providing that the latter are acting in their official capacities and in the performance of their public duties. Lastly, they do not apply to a person operating a crane under the direct supervision of a certified trainer of crane operators while on the training facility's grounds. Furthermore, the license provided under the Act and these proposed rules applies to persons operating cranes that are power-operated. More specifically, the license applies to persons operating cranes that are power-operated hoisting machines used in construction, demolition or excavation work that have a power-operated winch, load line and boom moving laterally by the rotation of the machine on a carrier and have a manufacturer-rated capacity of 10 tons or more. The non-transferable licenses shall be issued for five years and may be renewed when the applicant presents to the Board proof of recertification. The proposed rules further provide a due process framework within which an applicant may appeal the denial of a crane operator's license.

In addition to the foregoing, the Department has set forth within the proposed rules the manner in which a crane-related accident shall be reported. The rules require that an accident be reported in writing to the Department within 24 hours of the occurrence thereof by the licensee or by the licensee's employer. Informationally, the report must include the name and address of the crane operator; the operator's identification and telephone numbers; the time, date and place of the accident; the type of crane involved therein; the employer's name, business address and telephone number; the nature of the



injuries sustained to person and/or property; and any other information which may be relevant to the accident investigation. In the event of a crane-related, in-patient hospitalization or fatality, the rules require that both be immediately reported by the licensee or the licensee's employer by telephone and then in writing to the Department. Moreover, the site of a fatal accident must be secured by the employer until the Department has conducted its preliminary site investigation.

The Department has also delineated within the proposed rules the bases for suspending, revoking or refusing to grant a crane operator's license which may include the factors: a licensee or applicant has obtained a license fraudulently through deception, misrepresentation or under false pretenses; has fraudulently performed work for which a license is required under the Act; has engaged in gross negligence; has caused or contributed to an injury to a person or property; has engaged in repeated acts of negligence or incompetence; has engaged in occupational misconduct; has been convicted of, or engaged in acts which constitute a crime or offense relating adversely to the licensing activity; has been debarred from bidding on or engaging in public contracting pursuant to N.J.S.A. 34:11-56.25 et seq.; has had his or her crane operator's certification, authorization or license revoked in any other state, the District of Columbia, or any United States commonwealth, territory or possession, agency or authority; has violated the Act or these proposed rules; has demonstrated for medical, or other reasons, an inability to discharge the functions of a licensee; has engaged in present or past alcohol or drug use that is likely to impair the skill and safety required to operate a crane; has facilitated or permitted an unlicensed person to perform an act for which one must be licensed as a crane operator; has falsely or fraudulently advertised his or her services as a crane operator; has acted incompetently; has loaned, abandoned or transferred control of his or her license; has violated any administrative order of the Commissioner, or has demonstrated that he or she is unfit to hold a license for any valid reason as may be determined by the Commissioner.

The proposed rules also speak to the enforcement authority of the Commissioner of Labor with regard to the Act and these proposed rules, including the imposition of monetary penalties for violations thereof; specifically, not less than \$100.00 and not more than \$10,000 for each violation and not less than \$500.00 and not more than \$100,000 for a subsequent violation. The rules, moreover, recognize that an employer shall be held liable for the violations of his or her officers, agents or employees and that where a violation is of an ongoing nature, each day during which it continues shall be deemed to be an additional, separate and distinct offense. Lastly, the proposed rules invest the Commissioner with the discretionary authority to compromise and settle any claim for a penalty imposed under the Act or these rules as he or she deems to be both equitable and appropriate. In those instances where settlement or compromise is not feasible with the licensee or party related thereto, the rules allow for the exercise of due process rights to a hearing on the issues. Thus, one who has been cited for a violation of the Act and/or these rules, must be notified of the specific violation in question, the penalty to be imposed, and granted an opportunity for a formal hearing to be conducted pursuant to N.J.S.A. 52:14B-1 et seq., the Administrative Procedure Act. In sum, the proposed rules provide the licensing framework required for the safe and secure operations of various categories of cranes in this State.

Thus, proposed N.J.A.C. 12:121-1.1 sets forth the purpose and scope of the chapter, that is, the licensing of certain categories of crane operators, the establishment of a code of ethics and standards of practice for the safe operation of cranes and enforcement of the Licensing of Crane Operators Act.

N.J.A.C. 12:121-1.2 proposes to adopt by reference The American Society of Mechanical Engineers (ASME) B30.5-2000, and its subsequent editions, as a body of safety standards for the operation of cranes. Those standards include the manner in which mobile and crawler cranes should be operated, the load limits for crane operations, the safety and training issues which must be adhered to by those who operate cranes and training requirements for crane operations.

N.J.A.C. 12:121-1.3 provides that if any section, paragraph, sentence or word of this chapter is determined to be invalid by any court of competent jurisdiction, such determination will not affect or impair the validity of the remainder of this chapter.

N.J.A.C. 12:121-2.1 contains the definitions which are applicable to this chapter.

N.J.A.C. 12:121-3.1(a) creates a Crane Operators License Advisory Board to be established within the Department of Labor and which shall consist of seven members who are State residents. The construct of the Board will include the Commissioner of Labor or his or her designee, serving ex officio as the Chairperson; one heavy highway, utility or transportation construction

contractor representative; a building contractor representative; and four licensed crane operators who have been actively engaged in crane operations in this State for a period of at least five years immediately preceding their appointment. The proposed rule further notes that for a period of one year after the effective date of the Licensing of Crane Operators Act (April 1, 2004) and notwithstanding any other provisions to the contrary, the first four crane operators appointed to the Board shall not be required, at the time of their first appointment, to be licensed under the provisions of this chapter as crane operators. Subsection (b) provides that the Governor shall appoint each Board member for a term of three years, except that, of the members first appointed, two shall serve terms of three years, two shall serve terms of two years and two shall serve terms of one year. Moreover, each member shall hold office until his or her successor has been qualified, and any Board vacancy shall be filled for the unexpired term in the manner provided in the original appointment. Subsection (c) provides that no member of the Board may serve more than two successive terms, in addition to any unexpired term to which he or she was appointed.

N.J.A.C. 12:121-3.2 provides that Board members shall be reimbursed for expenses attendant to their duties and provided with office and meeting facilities and personnel required for the proper conduct of the Board's business.

N.J.A.C. 12:121-3.3 delineates the duties of the Board, to wit, to meet at least twice a year; approve and recognize the certification programs of any organization found by the Board to offer an equivalent testing and certification program that meets the requirements of the American Society of Mechanical Engineers ASME B30.5 and the National Commission of Certifying Agencies; advise the Commissioner of Labor in establishing, prescribing or changing licensing fees to the extent necessary to defray costs incurred by the Board in the performance of its duties; and to annually elect from its members a vice-chairperson and, if desired, appoint a secretary who need not be a Board member.

N.J.A.C. 12:121-4.1 sets forth the scope of Subchapter 4 which concerns the licensing process itself.

N.J.A.C. 12:121-4.2 delineates the eligibility requirements for obtaining a crane operator's license; namely, an applicant must be at least 18 years of age at the time the application is submitted; he or she must possess a current medical examiner's certificate; possess at the time the application is submitted either a current NCCCO certificate that meets the requirements of the American Society of Mechanical Engineers ASME B30.5 and the accreditation requirements of the National Commission of Certifying Agencies or an equivalent certification found by the Board to meet the requirements of the latter entities; have at least 1,000 hours of crane-related experience; and submit a license application completed in accordance with N.J.A.C. 12:121-4.3.

N.J.A.C. 12:121-4.3 deals with the procedures for completing a license application. Subsection (a) notes that a license application can be obtained from the Department of Labor, Division of Public Safety and Occupational Safety and Health. Subsection (b) sets forth the materials which the applicant shall provide to the Department in order to complete the application process; subsection (c) requires that an applicant provide the Department with any information for the five years prior to the date of the application concerning any pending or prior civil or criminal litigation or any pending or prior administrative actions to which the applicant is a party. Subsection (d) asks that an applicant submit his or her Social Security number in the licensing application in order to assist the Commissioner of Labor in the enforcement of the provisions of the Licensing of Crane Operators Act and these proposed rules. This subsection also notes that the Social Security number shall be used solely for the purposes for which it is requested, save in those instances contemplated under N.J.S.A. 2A:17-56.44(e) regarding the exchange of information by State licensing authorities with the Probation Division of the Department of Human Services pertaining to child support payment arrearage. Subsection (f) references the payment of a non-refundable license application fee as referenced in N.J.A.C. 12:121-4.6. Subsection (g) requires that the completed application be returned to the Department of Labor, the address of which is contained therein.

N.J.A.C. 12:121-4.4 deals with the manner in which crane operator licenses are to be renewed. Thus, subsection (a) provides that renewals shall be applied for in the same manner as initial license applications, while subsection (b) mandates that a renewal application be submitted to the Department of Labor at least 45 days prior to the expiration date of the license on forms prescribed by and obtainable from the Department. The latter subsection also provides that the filing date of the renewal application shall be deemed to be the postmark date on the envelope or, if hand-delivered, the date that the form is received and date-stamped in the Department of Labor.



Subsection (c) provides that when the renewal application is submitted within the required time period, the license may continue in effect until a determination is rendered on the renewal and that the applicant will be notified in writing whether a valid license extension has been granted thereto. The subsection further mandates that the valid license extension shall be carried upon the applicant's person along with the expired license for ready inspection by departmental authorities. Subsection (d) requires that the Commissioner shall renew a license if the applicant has completed an application as required by N.J.A.C. 12:121-4.3 within one year of the expiration date of the expired license, has paid the requisite renewal application fee, and has paid all outstanding penalties lawfully imposed under the Act or these rules. Lastly, subsection (e) provides that the Commissioner shall treat an application for renewal of a license which has expired for more than one year as an original application.

N.J.A.C. 12:121-4.5, which deals with the replacement of a license or the requested issuance of a duplicate license, provides in subsection (a) that an altered, defaced, mutilated, lost or stolen crane operator's license may be replaced upon written request of the license holder and only after a review thereof by the Commissioner. The loss or theft of a license shall be reported immediately to the Department of Labor. Subsection (b) requires that a written request for a replacement or issuance of a duplicate license shall be notarized and shall include the name, address and birth date of the license holder, the license holder's identification number; the circumstances surrounding the loss, theft, defacement or mutilation of the license and, if possible, the altered, defaced or mutilated license itself.

N.J.A.C. 12:121-4.6 relates to the fees attendant to the license application, license renewal or license replacement. Subsection (a) requires that an application fee of \$250.00 for five years shall be submitted with the initial license application, while subsection (b) requires that a like fee be submitted for a five-year license renewal. The latter also provides that a late fee of \$25.00 shall be assessed for the failure of an applicant to renew a license at least 45 days prior to the expiration date thereof and that an additional late fee of \$50.00 shall be assessed if the license had expired more than 365 calendar days after the date on which the license expiration had occurred. Moreover, subsection (c) provides that the cost of a replacement or duplicate license shall be \$25.00. Subsection (d) mandates that all of the foregoing fees be paid by certified check or money order made payable to the Commissioner of Labor. Subsection (e) permits the Commissioner, by amendment of this section of the proposed rules, to adjust the fees referenced herein in order to support associated programmatic costs. Finally, by way of subsection (f), the Department notes that it will not assume any liability for the loss in transmission of any associated license fee.

N.J.A.C. 12:121-4.7, which relates to the granting of a crane operator's license, provides, in subsection (a), that a license shall be granted when the applicant has complied with the requirements contained in N.J.A.C. 12:121-4.2 and 4.3. Concomitantly, subsection (b) requires that the license be in writing; contain the name and address of the licensee; the latter's unique identification number; contain the dates of issuance and expiration; and contain a photograph of the licensee's face, as per the dictates of N.J.A.C. 12:121-4.3(b)4. Subsection (c) makes plain that crane operator licenses shall not be transferable, while subsection (d) further requires that a license shall not be loaned, abandoned or allowed to pass from the possession of the licensee to whom it had been issued. It is further provided in subsection (e) that a license which has been transferred shall be invalid, null and void at the time of the transfer. Moreover, the aforementioned subsection also provides that anyone in possession of or who attempts to utilize or who utilizes a license which was obtained via a fraudulent transfer is subject to both civil and criminal prosecution and any other sanction imposed under the terms of the Act. The same applies to the licensee who transfers or attempts to transfer his or her license. Lastly, subsection (f) states that the Department of Labor will not be held liable for not issuing a license as a result of the failure of the application or fee to reach the Department for review and processing, nor for the loss of the license in delivery to the licensee where such is attributable to a delivery service not within the control of the Department of Labor.

N.J.A.C. 12:121-4.8, which pertains to the duration of a crane operator's license, provides in subsection (a) that all licenses shall be issued for a period of five years and may be renewed when the applicant provides proof of recertification by the NCCCO or any other organization found by the Board to offer an equivalent testing and certification program which meets the requirements of the American Society of Mechanical Engineers ASME B30.5 and the accreditation requirements of the National Commission for Certifying Agencies. However, the proposed rule offers a caveat; in order to stagger expiration dates of licenses, those licenses issued or renewed after April 1, 2004, shall expire or become void on the expiration date of the certification.

Subsection (b) further explicates that a license shall be cancelled automatically on the date of its expiration. Thus, anyone who continues to perform the duties of a crane operator with an expired license will be subject to the penalty provisions of the Act. Furthermore, as noted in subsection (c), any license obtained through fraudulent means will be deemed to be invalid and the perpetrator of the fraud will be subject to both civil and criminal prosecution under the Act. Subsection (d) provides that in all instances where the Commissioner refuses to grant or to renew a license, the applicant shall have the right to an informal conference or to a formal hearing, or both, in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

N.J.A.C. 12:121-4.9, which relates to the identification of a licensee, provides in subsection (a) that every person who operates a crane subject to these rules must have his or her license available at the site of the crane operator and readily available for inspection by representatives of the Department of Labor. Moreover, the license will be valid only in conjunction with a current certification from the NCCCO, or an equivalent certification sanctioned by the Board, and a current medical examiner's certificate. The license will also only be valid for the specialty or specialties for which the licensee is certified on the NCCCO or equivalent certificate. Subsection (b) states that a license which has been physically tampered with, altered or defaced will be deemed to be void. Similarly, subsection (c) mandates that any photostatic copies, photographs or reproductions of a license will be deemed to be invalid and, as noted in subsection (d), so will such copies, photographs or reproductions of current NCCCO or equivalent certifications.

N.J.A.C. 12:121-5.1 pertains to accident notification requirements. Subsection (a) provides that all crane-related accidents which result in injury to a person or damage to property shall be reported to the Department of Labor, in writing, by the licensee. If the latter is unable to do so, it shall be reported by the licensee's employer. The report to the Department must be issued within 24 hours of the occurrence in question and must include the crane operator's name, address, identification and telephone numbers; the date and location of the accident; the type of crane involved in the accident; the name, address and telephone number of the licensee's employer; the nature of the injury or injuries sustained and the name and addresses of the injured party or parties; the nature of the damage to property, the location of the property and the owner thereof, and all other relevant information which may be of use in the accident investigation. Subsection (b) further requires that in those instances where the accident has resulted in the in-patient hospitalization of a person or the death thereof, the licensee or his or her employer where the licensee is unable to do so, must report the accident immediately by telephone to the Department of Labor's 24 hour hotline. A written notification must then be faxed to the Department. If the accident involves a fatality, subsection (c) mandates that the accident site must immediately be secured by the licensee's employer until the Department of Labor has conducted a preliminary site investigation of the accident scene. Subsection (d) notes that failure to abide by the foregoing notification requirements will result in the imposition of monetary penalties.

N.J.A.C. 12:121-6.1 relates to the bases upon which the suspension or revocation of a crane operator's license may be premised. Those are set forth in subsection (a) and include instances where a licensee has: obtained a certification, registration, license or authorization to sit for an examination by fraudulent means; fraudulently performed work for which a license is required under the Act; engaged in grossly negligent or grossly incompetent activities which endangered the health and safety of a person or property; caused or contributed in any manner to the injury of a person or damage to property; engaged in repeated acts of negligence or incompetence; engaged in professional or occupational misconduct; been convicted of or engaged in acts which constitute a crime or offense that relates adversely to the licensing activity; been debarred from bidding on or engaging in public works pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.; had his or her certification, authorization or license to engage in work as a crane operator revoked or suspended by any other State, the District of Columbia, or any other United States commonwealth, territory, possession, agency or authority; violated or failed to comply with the Act or these proposed rules; demonstrated an inability for medical or other reasons to be able to safely discharge the duties of a licensee; engaged in present or past drug or alcohol usage that is likely to impair the skill and safety considerations necessary to operate a crane; facilitated, permitted or allowed an unlicensed person to perform an act for which a valid crane operator's license, registration, certification or authorization is required; fraudulently advertised his or her services as a crane operator; acted in a manner which demonstrates professional incompetence; committed or caused to be committed a violation of the Act; loaned or abandoned his or her license or allowed it to pass from



his or her control; violated an administrative order of the Commissioner; or demonstrated an unfitness to hold a valid crane operator's license.

N.J.A.C. 12:121-7.1 relates to the nature of the violations for which one may be cited under the terms of the Act and these proposed rules. Thus, subsections (a) and (b) provide that it shall be deemed to be unlawful for any person, partnership, firm, association, corporation, and/or for any officer, agent or employee thereof, to violate or proximately contribute to the violation of any of the provisions of the Act of these proposed rules. Moreover, subsection (c) requires that each incident which occurs in violation of the provisions thereof will be regarded as additional, separate and distinct offenses. In addition, subsection (d) provides that it is unlawful to operate a crane without a license; subsection (e) mandates that a crane operator's license is valid only in conjunction with a current certification and only in the specialty or specialties for which the licensee is certified; subsection (f) states that it shall be unlawful for an employer to permit anyone to engage in the operation of a crane or to offer one's self as a crane operator without a valid crane operator's license; subsections (g) and (h) note that any violation of the Act or these proposed rules by an employee or crane operator acting within the scope of his or her employment shall be regarded as a violation committed by the licensee's employer; subsection (i) notes that it is a violation of the Act and the rules if a licensee loans or abandons his or her license or allows it to otherwise pass from his or her control; while subsection (j) provides that it shall be a violation of the Act and of these proposed rules for any person to fail to comply with an order of the Commissioner in regard thereto and in a timely manner.

N.J.A.C. 12:121-7.2(a) specifies that the Commissioner of Labor shall enforce the provisions of the Act and of these proposed rules, make complaints against those who violate same and prosecute such violations. Additionally, subsection (b) permits the Commissioner and his or her representatives to enter and inspect any place or establishment covered by the Act and these proposed rules and, if a violation thereof is found, to order such violation to cease. In that regard, subsection (c) specifies that the Order to Cease shall contain the specific nature of the violation(s) and provide a reasonable, specified time frame within which to abate the violation. However, if the violation in question constitutes an imminent hazard and the Commissioner's order is not obeyed, subsection (d) permits the Commissioner to seek injunctive relief in Superior Court to compel compliance therewith. Lastly, subsection (e) provides that nothing in the Act shall prevent the Commissioner from prosecuting any violation of the Act or of these proposed rules, notwithstanding that the violations have been corrected in accordance with the Order to Cease.

N.J.A.C. 12:121-7.3 relates to the imposition of penalties for violations of the Act and of these proposed rules; specifically, subsection (a) specifies that each violation thereof shall be punishable by a monetary penalty of not less than \$100.00 and not more than \$10,000, while a second or subsequent offense will be individually punishable by a penalty of not less than \$500.00, nor more than \$100,000. Subsection (b) provides that the employer will bear monetary responsibility for a violation committed by his or her employee, officer or agent. Moreover, where a violation is of an ongoing nature, subsection (c) mandates that each day during which the violation continues will be deemed to be an additional, separate and distinct offense. Subsection (d), however, provides that the Commissioner, on a discretionary basis, may compromise and settle an outstanding penalty claim.

N.J.A.C. 12:121-8.1 mandates that no penalty shall be collected unless the person cited is first provided with notification of the violation, the amount of the penalty imposed and is given an opportunity to request a formal hearing thereon. A request for a formal hearing, per the dictates of subsection (b), shall be made in writing and be received by the Department of Labor within 21 calendar days following receipt of the violation notice. Furthermore, the person cited may request the initiation of a settlement conference at the same time that the request for a formal hearing is made. Subsection (c) requires that all hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. However, if a settlement conference or a formal hearing is not requested, subsection (d) provides that the notice of violation shall become the Final Order of the Commissioner upon expiration of the 21 calendar day period following the receipt thereof. Should a settlement conference not result in a resolution of the matter, then pursuant to subsection (e), the case will be transmitted to the Office of Administrative Law as a contested case and a hearing will be scheduled thereon. Subsection (f) provides that payment of a penalty will be due after a final administrative determination has been issued or when an uncontested notification of violation becomes a final decision of the Commissioner absent an appeal therefrom. The subsection also provides that payments be sent to the Department of Labor, the address of which is also provided. If necessary,

subsection (g) permits the Department to recover the penalty with associated costs by way of a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-10 et seq.

N.J.A.C. 12:121-9.1 sets forth the technical documents noted in the proposed rules and where copies thereof can be obtained.

Because the Department has provided a 60-day comment period on this notice of proposal, this notice of proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed new rules will establish a regulatory framework by which operators of specified types of cranes will be licensed by the Department of Labor in order to legally perform their skilled and inherently dangerous tasks. The rules will have a positive social impact in that by carefully structuring these new rules and by stringent enforcement thereof and the legislation upon which it is predicated, the Licensing of Crane Operators Act, N.J.S.A. 45:26-1 et seq., the Department will provide for a safer and secure working environment at construction, renovation and demolition sites across this State. That environment will benefit not only the workers and the licensees themselves who labor at those sites, but those who employ them. Thus, by adhering to the strictures of these proposed new rules, potential safety issues and the legal and monetary liabilities which might flow therefrom can be understood in detail by all parties who fall within their enforcement ambit. This, in turn, will serve to apprise applicants for crane operator licenses of the requirements which must be met before they can commence their work duties while also apprising them of how they must comport themselves in regard to license renewal and legal maintenance of the document itself. Likewise, the rules set forth the manner in which employers and their employees and agents are to comport themselves vis-à-vis the licensing process, and the liabilities which may arise if the regulatory process is either ignored or thwarted. By setting out the responsibilities of the foregoing parties and by noting the legal consequences for failure to obey the tenets of the Act and of these rules, there will be a diminution of the hazards attendant to the operation of cranes by non-qualified individuals and, therefore, the maintenance of a safer work-site environment.

#### Economic Impact

The proposed new rules will not have a serious economic impact on those who follow the letter of the Act and the rules. Those who do not do so will be faced with concomitant costs associated with the penalties which may be imposed therefor and with legal fees incurred in litigating the substance of the cited violation(s). In addition, those applicants who apply for a crane operator's license will have to incur the cost of the licensing fee of \$250.00 for a five year license. The financial cost, which comes out to \$50.00 per year, is both reasonable and necessary as the fees will help defray the costs incurred by the Department of Labor to enforce the Act and these new rules. The cost, moreover, is minimal when viewed against the earning potential of the crane operators and the general licensing fees which are imposed on other professions in this State.

#### Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards.

#### Jobs Impact

The Department does not believe that the proposed new rules will result in the generation or loss of any jobs, but will facilitate existing employment opportunities by providing clear legal and regulatory parameters for the hiring and use of crane operators in this State.

#### Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry.

#### Regulatory Flexibility Statement

The proposed new rules will have an impact on all businesses which utilize crane operators in the performance of their job duties. However, the financial impact will be relatively minimal in nature. Thus, those persons who apply for a crane operator license will be expected to pay a fee of \$250.00 for a license which will be valid for a five-year period. That averages out to just \$50.00 per year; an amount which is both reasonable and nominal. The impact thereof on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as on larger entities, will be recouped through the normative costs charged to perform the construction, renovation or demolition work in question. The rules themselves will actually enable all businesses in this State which require the services of crane operators, irrespective of size, to adhere to the statutory and regulatory requirements regarding the legal



imperatives to be followed in order to avoid the imposition of legal and monetary sanctions for failing to do so. In that regard, the rules will have an ameliorative impact on the business community which could lead to a net savings of monies which might otherwise be expended on legal and other consequential fees. Also, the new rules establish standards for reacting to a crane-related accident which, if properly followed by the licensee and his or her employer, will permit the Department to more quickly respond to the accident scene, investigate the situation and issue a definitive accident report. This, in turn, will allow for a resolution and amelioration of the causes of the accident thereby permitting the work-site to be reopened and work thereon to resume; a conclusion which will certainly have a positive financial impact for those whose livelihoods are bound up in the construction trades. Most importantly, the rigorous enforcement by the Department of the licensing and re-licensing requirements of the Act and the proposed new rules should add immeasurably to a safer work environment which should translate favorably into money saved and aggravation avoided by all who labor on or are in contact with cranes. No professional services will be needed in order to comply with these proposed new rules.

#### Smart Growth Impact

The Department does not anticipate that the proposed new rules will have any impact on the achievement of smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

### CHAPTER 121 LICENSING OF CRANE OPERATORS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 12:121-1.1 Purpose and scope

(a) This chapter is promulgated to establish reasonable standards for:

1. The licensing of certain crane operators;
2. The establishment of a code of ethics and standards of practice for the safe operation of cranes; and
3. Enforcement of the Licensing of Crane Operators Act.

(b) This chapter shall apply to the licensure of persons operating certain cranes, as defined in N.J.A.C. 12:121-2, that are power-operated hoisting machines used in construction, demolition, or excavation work.

(c) This chapter shall not apply to:

1. The licensure of persons operating forklifts, digger derrick trucks, aircraft, bucket trucks, knuckle booms, trolley booms, or any vehicles or machines not having a power-operated winch and load line; or
2. The military forces of the United States or its allies, or to the duly authorized militia of any state, nor to the police or fire departments of the State of New Jersey, providing the same are acting in their official capacity and in the performance of their public duties, nor to a person operating a crane under the direct supervision of a certified trainer of crane operators while on the training facility's grounds.

##### 12:121-1.2 Adoptions by reference

The American Society of Mechanical Engineers (ASME) B30.5-2000 and its subsequent editions are hereby incorporated as a rule of safety standard for the operation of cranes.

##### 12:121-1.3 Validity

If any section, paragraph, sentence or word of this chapter is determined to be invalid by any court of competent jurisdiction, such determination shall not affect or impair the validity of the remainder of this chapter.

#### SUBCHAPTER 2. DEFINITIONS

##### 12:121-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Licensing of Crane Operators Act, N.J.S.A. 45:26-1 et seq.

"Applicant" means any person seeking to obtain a New Jersey license to operate cranes as defined in this subchapter.

"Approved" means approved by the Commissioner of Labor or his or her designee.

"ASME B30.5" means the American Society of Mechanical Engineers B30.5.

"Board" means the Crane Operators License Advisory Board.

"Certification" means certification from the National Commission for the Certification of Crane Operators (NCCCO or CCO) or any other organization found by the Board to offer an equivalent testing and certification program meeting the requirements of the American Society of Mechanical Engineers ASME B30.5 and the accreditation requirements of the National Commission for Certifying Agencies (NCCA).

"Commissioner" means the New Jersey Commissioner of Labor or his or her designee.

"Crane" means a power-operated hoisting machine that has a power-operated winch, load line and boom moving laterally by the rotation of the machine on a carrier, and having a manufacturer-rated capacity of 10 tons or more and is used in construction, demolition and excavation work. In addition, the following should apply:

1. "Lattice boom truck crane" or "LBT" means a crane consisting of a superstructure mounted on an automotive truck as its base and its means of travel.

2. "Lattice boom crawler crane" or "LBC" means a crane consisting of a superstructure mounted on a base with crawler treads as a means for travel.

3. "Small telescoping boom crane" or "TSS" means a crane, with extendable and retractable boom mounted on an automotive truck as its base and as its means of travel, and with a manufacturers load rating of less than 17.5 tons.

4. "Large telescoping boom crane" or "TLL" means a crane, with extendable and retractable boom mounted on an automotive truck as its base and as its means of travel, and with a manufacturers load rating of 17.5 tons or more.

"Crane operator" means an individual engaged in the operation of a crane.

"Department" means the New Jersey Department of Labor.

"Employee" means:

1. Any person, including supervisory personnel, suffered or permitted to work by an employer; or

2. A member of either a board, corporation, partnership, proprietorship, joint venture, fund, authority, or similar entity directly performing crane work.

"Employer" means a body, board, person, corporation, partnership, proprietorship, joint venture, fund, authority, or similar entity employing, permitting or suffering another to work, or directly performing crane work. In the case of a corporation, the officers of the corporation, and any agents having the management of the corporation, shall be deemed to be the employers of the employees of the corporation for the purposes of the Act and this chapter. This term shall apply to private employers, to the State and its political subdivisions and any boards, commissions, schools, institutions, or authorities created or recognized thereby. This term also includes contractors and subcontractors or any entity providing a crane rental service.

"License" means a certificate issued by the Commissioner, documenting acceptance by the Commissioner, of a person as competent to operate a crane as defined by this subchapter.

"NCCA" means the National Commission for Certifying Agencies.

"NCCCO" or "CCO" means the National Commission for the Certification of Crane Operators.

"Ton" means 2,000 pounds as defined in U.S. Standard of Measurement.

#### SUBCHAPTER 3. CRANE OPERATORS LICENSE ADVISORY BOARD

##### 12:121-3.1 Establishment of the Crane Operators License Advisory Board

(a) A Crane Operators License Advisory Board shall be established within the Department of Labor consisting of seven members who are residents of the State of New Jersey, as follows:

1. The Commissioner or his or her designee, as the chairperson, serving ex-officio and representing the Department of Labor;



2. One heavy highway, utility, or transportation construction contractor representative;
3. A building contractor representative; and
4. Four licensed crane operators who have been actively engaged in crane operations in this State for at least five years immediately preceding their appointment.

i. For a period of one year after the effective date of the Licensing of Crane Operators Act (April 1, 2004), and notwithstanding any other provisions to the contrary, the first four crane operators appointed as members of the crane operators license advisory board shall not be required, at the time of their first appointment, to be licensed under the provisions of this Chapter as crane operators.

(b) The Governor shall appoint each Board member for a term of three years, except that of the members first appointed, two shall serve for terms of three years, two shall serve for terms of two years, and two shall serve for terms of one year. Each member shall hold office until his or her successor has been qualified. Any vacancy in the membership of the Board shall be filled for the unexpired term in the manner provided for the original appointment.

(c) No member of the Board may serve more than two successive terms, in addition to any unexpired term to which he or she was appointed.

#### 12:121-3.2 Reimbursement of Board members

Members of the Board shall be reimbursed for expenses attendant to their duties and provided with office and meeting facilities and personnel required for the proper conduct of the Board's business.

#### 12:121-3.3 Duties of the Board

(a) The Board shall:

1. Meet at least twice a year and may hold additional meetings as necessary to discharge its duties;
2. Approve and recognize the certification programs of any organization found by the Board to offer an equivalent testing and certification program meeting the requirements of the American Society of Mechanical Engineers ASME B30.5 and the National Commission of Certifying Agencies;
3. Advise the Commissioner in the establishing, prescribing or changing of fees to the extent necessary to defray all proper expenses incurred by the Board in the performance of its duties, and any staff employed to administer the Act; and
4. Annually elect from its members a vice-chairperson and may appoint a secretary, who need not be a member of the Board.

### SUBCHAPTER 4. LICENSING

#### 12:121-4.1 Scope of subchapter

This subchapter shall apply to the procedures required to obtain or to renew a license as a crane operator.

#### 12:121-4.2 Eligibility requirements for obtaining a license

(a) The Department shall issue a license to each applicant who satisfies the requirements listed below. The applicant for a license shall:

1. Be at least 18 years of age at the time of application;
2. Maintain a current medical examiner's certificate;
3. Possess at the time of application either one of the following:
  - i. A current NCCCO certificate that meets the requirements of the American Society of Mechanical Engineers ASME B30.5 and the accreditation requirements of the National Commission for Certifying Agencies; or
  - ii. An equivalent certification found by the Board to meet the requirements of the American Society of Mechanical Engineers ASME B30.5 and the accreditation requirements of the National Commission for Certifying Agencies;
4. Have at least 1,000 hours of crane-related experience; and
5. Submit a license application completed in accordance with N.J.A.C. 12:121-4.3 and 4.6.

#### 12:121-4.3 Procedures for completing license application

(a) Each applicant for a license shall complete an application, which can be obtained from the Department of Labor at:

Division of Public Safety and Occupational Safety and Health  
Office of Public Safety Compliance  
1 John Fitch Plaza, 3rd Floor  
PO Box 386  
Trenton, NJ 08625-0386

(b) Each applicant shall provide the following information to the Department of Labor:

1. Name, address, date of birth, age, sex, height, weight, eye color, driver's license number, and telephone number;

i. Proof that the applicant is at least 18 years of age at the time of the application shall be provided with the application by submitting a notarized photocopy of one or more of the following documents:

- (1) Photo driver's license;
- (2) County/State identification;
- (3) Passport; or
- (4) Birth certificate;

2. A photocopy of his or her current medical examiner's certificate;

3. A photocopy of his or her current NCCCO certificate or an equivalent certification found by the Board to meet the requirements of the American Society of Mechanical Engineers ASME B30.5 and the accreditation requirements of the National Commission for Certifying Agencies;

4. Two recent, identical passport-size color photographs taken against a white background or backdrop with the applicant's face being not less than three quarters of an inch in width. The applicant shall not wear a hat, dark glasses or any other item which may alter or disguise the overall features of the face in the photographs;

i. The applicant shall legibly print his or her name on the back of both photographs submitted; and

5. The name and address of the applicant's present employer and the applicant's position with the employer.

(c) For five years prior to the date of application, each applicant shall disclose to the Department of Labor and attach to the application form the following information:

1. Any previous and pending civil litigation, with current status;
2. Any previous and pending criminal litigation, with current status; and

3. Any previous and pending administrative actions, with current status, pertaining to any State, Federal, local laws or regulations, or both.

(d) Each applicant is requested to provide his or her Social Security number in his or her license application to assist the Commissioner in the enforcement of the provisions of P.L. 2003, c.171, N.J.S.A. 45:26-1 et seq., Professions and Occupations.

1. Each Social Security number collected shall be used as an identifier in the Commissioner's computerized recordkeeping system to aid in the processing of license applications.

2. Each Social Security number collected shall remain confidential and used solely for the purpose for which it has been requested, save in those instances contemplated under N.J.S.A. 2A:17-56.44(e) regarding the exchange by State licensing authorities of information with the Probation Division of the Department of Human Services pertaining to child support arrearage.

(e) The applicant shall sign and date a statement certifying that the information contained in the application is accurate, true, and complete to the best of his or her knowledge.

(f) The applicant for a crane operator's license shall submit with his or her license application the appropriate non-refundable fee in accordance with N.J.A.C. 12:121-4.6.

(g) Completed applications shall be submitted to:

New Jersey Department of Labor  
Division of Public Safety and Occupational Safety and Health  
Office of Public Safety Compliance  
1 John Fitch Plaza, 3rd Floor  
PO Box 386  
Trenton, NJ 08625-0386



## 12:121-4.4 License renewals

(a) Renewals shall be applied for in the same manner as initial license applications.

(b) An application for renewal shall be submitted at least 45 days prior to the expiration date of the license.

1. It is the duty and responsibility of the licensee to renew his or her license on forms prescribed by the Department of Labor.

2. The filing date of the renewal application shall be deemed to be the date the envelope is postmarked, or, if hand-delivered, the date it is received and date-stamped in the Department of Labor office.

(c) When the application for renewal is submitted within the required time period, the license may continue in effect until the Commissioner renders a determination regarding the renewal application. The Department shall notify the applicant in writing whether a valid extension authorization has been granted. This validation together with the expired license shall be carried upon the worker's person and be readily available for inspection by representatives of the Commissioner.

(d) The Commissioner shall renew a license if the renewal applicant has:

1. Submitted a completed application as set forth in N.J.A.C. 12:121-4.3 within one year of the expiration date of the expired license;

2. Paid the required renewal application fee as noted in N.J.A.C. 12:121-4.6(d); and

3. Paid all outstanding penalties lawfully imposed under the Act and this chapter.

(e) The Commissioner shall treat an application for renewal of a license which has expired for more than one year as an original application.

## 12:121-4.5 Replacement and/or duplicate licenses

(a) An altered, defaced, mutilated, lost, or stolen license may be replaced upon written request of the license holder and only after a review of the circumstances by the Commissioner.

1. Any individual who loses his or her license or has it stolen shall immediately notify the Department of that fact in writing.

(b) A written request for a replacement or duplicate license shall be notarized and shall include:

1. The name, address and date of birth of the license holder;

2. The license holder's unique identification number;

3. The circumstances surrounding the loss of the license, including when, where and how the license was altered, defaced, mutilated, lost or stolen; and

4. If possible, the altered, defaced, or mutilated license, itself.

(c) The required fee for a replacement or duplicate license in accordance with N.J.A.C. 12:121-4.6 must be included with the notarized request.

## 12:121-4.6 License fees

(a) An application fee of \$250.00 for five years shall be submitted with the original (initial) application for license, completed per the requirements of N.J.A.C. 12:121-4.3.

(b) A renewal license application fee of \$250.00 for five years shall be submitted with the completed renewal application for license, per the requirements of N.J.A.C. 12:121-4.4.

1. A late fee of \$25.00 shall be assessed for failing to renew a license at least 45 days prior to its expiration date;

2. An additional late fee of \$50.00 shall be assessed if the license had expired more than 365 calendar days after the date on which the expiration occurred.

(c) The cost for a replacement or duplicate license shall be \$25.00.

(d) All original, renewal, replacement or duplicate license application fees shall be paid by certified check, by money order, or by such other form as the Department deems suitable, made payable to the Commissioner of Labor.

(e) The Commissioner, by amendment to this section, may adjust the fees referenced in this section to support program costs.

(f) No liability shall be assumed by the Department for loss in the transmission of a license fee.

## 12:121-4.7 Granting of license

(a) A license shall be granted in accordance with (b) below when the individual applicant complies with the requirements of N.J.A.C. 12:121-4.2 and 4.3.

(b) The license shall:

1. Be in writing;

2. Contain the name and address of the operator to whom it is issued;

3. Contain the license holder's unique identification number;

4. Contain the date of issuance and the date of expiration; and

5. Contain a photograph of the face of the licensee in accordance with N.J.A.C. 12:121-4.3(b)4.

(c) Crane operator licenses shall not be transferable.

(d) A license shall not be loaned, abandoned, or allowed to pass from the possession of the individual to whom it has been issued for use.

(e) Any license transferred shall be invalid, null and void at the time of transfer.

1. Any individual in possession of or who attempts to utilize or utilizes a license obtained by fraudulent transfer is subject to civil and criminal prosecution and any other appropriate sanction authorized under the Act.

2. Any individual who transfers or who attempts to transfer his or her license to another individual is subject to criminal prosecution and any other appropriate sanction authorized under the Act.

(f) The Department shall not be held liable for not issuing a license as a result of the failure of the application or fee to reach the Department for review and processing. Similarly, the Department shall not be liable for the loss of a license in delivery to the licensee attributable to delivery service not under the Department's control.

## 12:121-4.8 License duration

(a) All licenses shall be issued for a period of five years and may be renewed when the applicant provides proof of recertification by the NCCCO or any other organization found by the Board to offer an equivalent testing and certification program which meets the requirements of the American Society of Mechanical Engineers ASME B30.5 and the accreditation requirements of the National Commission for Certifying Agencies.

1. However, in order to stagger the expiration dates thereof, those licenses first issued or renewed after April 1, 2004, shall expire or become void on the expiration date of the certification.

(b) A license shall be automatically canceled on the date of its expiration. Any person performing the duties of a licensee and holding an expired license shall be subject to the penalty provisions of the Act.

(c) Any person using fraudulent means to obtain a license shall be subject to civil and criminal prosecution under the Act. Any license acquired through such means shall be invalid.

(d) In all cases where the Commissioner refuses to grant a license or to renew a license, the person shall have the right to an informal conference or formal hearing, or both, in accordance with the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.), and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1).

## 12:121-4.9 Identification of a licensee

(a) Each individual operating a crane as defined in N.J.A.C. 12:121-2.1 shall have his or her crane operator license available at the site of crane operation and readily available for inspection by representatives of the Commissioner of the Department of Labor.

1. A crane operator's license shall be valid only in conjunction with:

i. A current certification from the NCCCO or an equivalent form of current certification accepted by the Board; and

ii. A current medical examiner's certificate.

2. A crane operator's license shall be valid only for the specialty or specialties for which the crane operator is certified on the NCCCO certificate or equivalent certificate.

(b) Tampered with, altered, or defaced licenses shall be void.

(c) Any photostatic copies, photographs, or reproductions of a license shall be invalid.

(d) Any photostatic copies, photographs, or reproductions of current NCCCO certifications, or of equivalent certifications accepted by the Board, shall also be invalid.



## SUBCHAPTER 5. ACCIDENT NOTIFICATION REQUIREMENTS

## 12:121-5.1 Accident notification requirements

(a) All crane-related accidents resulting in injury to a person or persons or damage to property shall be reported to the Department in writing by the licensee or by the licensee's employer when the licensee is unable to do so, within 24 hours of occurrence. The information provided must include:

1. The crane operator's name, complete address, the crane operator's unique identification number, and the crane operator's telephone number;
2. The location, date and time of the incident;
3. The type of crane involved in the incident;
4. The name of the employer of the crane operator with the employer's business address and telephone number;
5. The nature of injury or injuries to a person or persons with the name and address of the injured person or persons;
6. The nature of damage(s) to property with the name and address of the property owner as well as the location of the damaged property; and
7. Any other relevant information that may assist in the incident investigation.

(b) All crane-related accidents resulting in an in-patient hospitalization or death shall be immediately reported by the licensee or in the event he or she is unable to do so, the licensee's employer, orally by telephone and also in writing.

1. The oral report shall be made directly to the Department's 24 Hour Hotline at 800-624-1644;

2. The written accident notification shall contain the same information as identified at (a)1 through 7 above and shall be submitted to:

New Jersey Department of Labor  
Division of Public Safety and Occupational Safety and Health  
Office of Public Safety Compliance  
1 John Fitch Plaza, 3rd Floor  
PO Box 386  
Trenton, NJ 08625-0386

3. To supplement the above, the written accident notification must also be faxed to the Department at 609-292-3749.

(c) If the incident involves a fatality, the area of the site directly involved shall be immediately secured by the employer until the Department has conducted a preliminary site investigation.

(d) Failure to comply with the incident notification requirements of this subchapter shall subject the violator to sanctions and/or monetary penalties specifically identified at N.J.A.C. 12:121-7.3.

## SUBCHAPTER 6. SUSPENSION, REVOCATION OR REFUSAL TO GRANT A LICENSE

## 12:121-6.1 Suspension or revocation of a crane operator's license or refusal to grant a license

(a) In addition to the grounds for license revocation as set forth in N.J.S.A. 45:1-21, the Commissioner may refuse to grant or may suspend or revoke a crane operator's license for any good cause within the meaning and purposes of the Act or this chapter or if that individual has:

1. Obtained a certification, registration, license or authorization to sit for an examination through fraud, deception, misrepresentation or under false pretense;
2. Fraudulently or deceitfully performed work for which a license is required under this Act;
3. Engaged in gross negligence or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any individual;
4. Caused or contributed in any manner which directly or indirectly resulted in an injury to a person or damage to property;
5. Engaged in repeated acts of negligence or incompetence;
6. Engaged in professional or occupational misconduct as may be determined by the Commissioner;
7. Been convicted of, or engaged in acts constituting, any crime or offense relating adversely to the licensing activity as may be determined by the Commissioner;
8. Been debarred from public contracting pursuant to N.J.S.A. 34:11-56.25 et seq.;

9. Had his or her authorization, certification, or license to engage in work as a crane operator revoked or suspended by any other state, the District of Columbia or a United States commonwealth, territory or possession, agency or authority;

10. Violated or failed to comply with the provisions of P.L. 2003, c.171, N.J.S.A. 45:26-1 et seq., or this chapter, as may be determined by the Commissioner;

11. Demonstrated the incapacity or incapability, for medical reasons or any other good cause, of discharging the functions of a licensee in a manner consistent with public health, safety or welfare;

12. Engaged in present or past drug or alcohol use that is likely to impair the skill and safety necessary to operate a crane, or any duties pertaining thereto;

13. Facilitated, permitted, or allowed an unlicensed individual to perform an act for which a crane operator license, registration, authorization or certification is required, or aided and abetted an unlicensed individual in performing such an act;

14. Falsely or fraudulently advertised his or her services as a crane operator;

15. Acted in a manner which demonstrates incompetence;

16. Committed or caused the commission of any violation of P.L. 2003, c.171, N.J.S.A. 45:26-1 et seq., or this chapter;

17. Loaned, abandoned, or allowed his or her license to pass from his or her personal control;

18. Violated an administrative order issued by the Commissioner; or

19. Demonstrated that he or she is unfit to hold a license for any valid reason as may be determined by the Commissioner.

(b) Any person who has his or her license suspended or revoked pursuant to this section shall not perform crane operations pursuant to that Act until the Department restores such license.

(c) The Commissioner may suspend or revoke a license for violations of this chapter provided that:

1. Written or oral notice of the violations is provided to the person; and

2. The person has the right to appeal through informal conference or formal hearing, or both, in accordance with the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1).

## SUBCHAPTER 7. ENFORCEMENT

## 12:121-7.1 Violations

(a) It shall be unlawful for any person, partnership, firm, association, or corporation, and/or any officer, agent, or employee thereof, to violate or proximately contribute to the violation of any of the provisions of the Act or of the rules promulgated pursuant thereto.

(b) Any violation of the Act by an employee, acting within the scope of his or her authority, of any person, partnership, firm, association, or corporation, shall be deemed to be a violation committed by such person, partnership, firm, association, or corporation.

(c) Each incident which occurs in violation of the Act's provisions shall constitute an additional, separate and distinct offense.

(d) It shall be unlawful for anyone to engage in the operation of a crane, offer himself or herself for employment as a crane operator or otherwise act, attempt to act, present or represent himself or herself as a crane operator unless licensed as such under the provisions of the Act.

(e) The crane operator's license shall be valid only in conjunction with a current certification and only in the specialty or specialties for which the crane operator is certified.

(f) It shall be unlawful for any employer to permit a person to engage in the operation of a crane, offer himself or herself employment as a crane operator or otherwise act, attempt to act, present or represent himself or herself as a crane operator unless licensed as such under the provisions of the Act.

(g) Any violation of this Act and regulations by an employee, acting within the scope of his or her authority, of any person, partnership, firm, association, or corporation also shall be deemed to be a violation committed by the person, partnership, firm, association, or corporation.

(h) It shall be unlawful for a crane operator or employee, acting within the scope of his or her authority, of any person, partnership, firm,



association, or corporation to violate any provision of the Act and/or this chapter.

(i) It shall be a violation to loan, abandon, or allow the license to pass from the licensee's personal control.

(j) It shall be a violation for any individual to fail to comply with an order from the Commissioner pertaining to the Act and this chapter within the time specified by such order.

#### 12:121-7.2 Orders to cease

(a) The Commissioner shall enforce the provisions of the Act, make complaints against persons violating provisions of the Act and the rules adopted thereunder, and prosecute such violations.

(b) The Commissioner, and any duly authorized representative of the Commissioner, shall have the authority to enter and inspect any place or establishment covered by the Act. If, upon inspection, the Commissioner discovers a condition which exists in violation of the provisions of the Act or this chapter, he or she shall be authorized to order such violation to cease.

(c) Orders to cease shall:

1. State with specificity the nature of the cited violation(s) of the provisions of the Act or this chapter; and

2. Provide a reasonable, specified time within which the required remedial action shall be taken by the person responsible, if applicable.

(d) If the violation constitutes an imminent hazard and the Commissioner's order is not obeyed, the Commissioner may apply for an injunction in the Superior Court of New Jersey to compel compliance.

(e) Nothing in this Act shall prevent the Commissioner from prosecuting any violation of the Act or this chapter, notwithstanding that the violations are corrected in accordance with the Order.

#### 12:121-7.3 Penalties

(a) Any violation of any of the provisions of the Act or of these rules promulgated pursuant thereto shall be punishable by a monetary penalty of not less than \$100.00 and not more than \$10,000 for each violation. For a second or a subsequent offense a penalty of not less than \$500.00 and not more than \$100,000 shall be imposed for each violation. Penalties shall be collected in accordance with "The Penalty Enforcement Law of 1999," P.L. 1999, c.274, N.J.S.A. 2A:58-10 et seq.

(b) Any violation of the Act by an officer, agent or employee shall also be deemed to be a violation committed by the employer who will be penalized therefor under the terms of the Act and of this chapter.

(c) Where the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense.

(d) The Commissioner, at his or her discretion, may compromise and settle any claim for a penalty imposed under the Act in such amount as he or she deems to be appropriate and equitable under all of the circumstances, including, but not limited to:

1. The past record of compliance with provisions of the Act by the person cited;

2. The degree of cooperation afforded to the Commissioner's representatives by the person cited in securing compliance with the provisions of the Act;

3. Whether the violation was willful in nature; and

4. Whether the violation resulted in injury or bodily harm.

### SUBCHAPTER 8. HEARINGS

#### 12:121-8.1 Hearings

(a) No penalty shall be collected pursuant to N.J.A.C. 12:121-7.3 unless the person cited is first provided with:

1. Notification of the violation;

2. The amount of the penalty to be imposed; and

3. An opportunity to request a formal hearing.

(b) A request for a formal hearing shall be made in writing and be received by the Department within 21 calendar days following receipt of the notice of violation. The person cited may request the initiation of a

settlement conference at the time that the request for a formal hearing is made.

1. If a settlement conference is requested and/or the Department determines that a settlement conference would be useful, the settlement conference shall be scheduled and conducted by the Department within a time frame specified by the Commissioner.

2. The Commissioner, in his or her discretion, is authorized and empowered to compromise and settle any claim for a penalty under the Act for any amount that appears appropriate and equitable under all of the circumstances.

(c) All hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) If an informal settlement conference or hearing is not requested, the notice of violation shall become a final order of the Commissioner upon expiration of the 21-day period following the receipt thereof.

(e) If a settlement is not agreed upon, any request for a formal hearing shall be transmitted to the Office of Administrative Law (OAL).

(f) Payment of the penalty shall be due when a final agency determination is issued in writing or when a notification becomes a final decision because no appeal has been requested.

1. All payments shall be made payable to the Department of Labor in the form of a certified check or money order, or other such form as the Department deems suitable.

2. Payments shall be submitted to:

New Jersey Department of Labor  
Division of Public Safety and Occupational Safety and Health  
Office of Public Safety Compliance  
1 John Fitch Plaza, 3rd Floor  
PO Box 386  
Trenton, NJ 08625-0386

(g) Upon entry of a final order, the penalty imposed may be recovered with costs in a summary proceeding commenced by the Commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c.274 (N.J.S.A. 2A:58-10 et seq.)

### SUBCHAPTER 9. AVAILABILITY OF DOCUMENTS

#### 12:121-9.1 Availability of documents

(a) Copies of the publications referred to in this chapter may be obtained from the following organizations:

1. The American Society of Mechanical Engineers publishes Mobile and Locomotive Cranes, B30.5 and addenda. This publication and its addenda are available from:

The American Society of Mechanical Engineers  
22 Law Drive, Box 2900  
Fairfield, New Jersey 07007  
or

The American Society of Mechanical Engineers  
Three Park Avenue  
New York, New York 10016

2. The ASME B30.5 publication and its addenda are also available from:

The American National Standards Institute  
11 West 42nd Street  
New York, New York 10036

3. The NCCCO or CCO Certification information may also be obtained from:

The National Commission for the Certification of Crane Operators  
2750 Prosperity Ave.  
Fairfax, VA 22031-4312